IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2379 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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RADHE LABORATORIES & 1 - Petitioner(s)
Versus
BIBIBEN WD/O DECD. AHMED SULEMAN & 6 - Respondent(s)

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Appearance :
MR PV NANAVATI for Petitioner(s) : 1 - 2.MR VIBHUTI NANAVATI for Petitioner(s) : 1 - 2.
MR. A.A.QURESHI for MR SHAKEEL A QURESHI for Respondent(s) : 1 - 6.
None for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6
MR. ASPI KAPADIA for Respondent(s) : 7

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 29/06/2006

ORAL JUDGMENT

1. **RULE**. Mr. A.A.Qureshi, learned advocate appears and waives service of notice of Rule on behalf of Respondent nos. 1 to 6 whereas Mr. Aspi Kapadia, learned advocate appears and waives service of notice of Rule on behalf of Respondent no.7.
2. By filing instant petition under Article 227 of the Constitution of India, the petitioners seek to challenge the order dated 15.10.2005 recorded below application (Exh.114) in Special Civil Suit No. 104 of 2001 and Special Civil Suit No. 181 of 1996 by the learned 2nd Additional Senior

Civil Judge (SD), Bharuch, by which the application filed by Respondent nos. 1 to 6 – heirs and legal representatives of deceased Ahmad Suleman Asmala / original plaintiff of Special Civil Suit No. 104 of 2001 came to be allowed and thereby Petitioners were ordered to deposit damages of compensation / premium of Rs.3500/- per month from 1.8.1996 till disposal of the Suit. The order further stipulates that if the petitioners fail to deposit the amount, they will suffer procedural rights.

3. This Court has considered the submissions advanced by Mr. Vibhuti Nanavaty, learned advocate of the Petitioners, Mr. A.A.Qureshi, learned advocate for Respondent nos. 1 to 6 and Mr. Aspi Kapadia, learned advocate for Respondent no.7 and perused the impugned judgement and order.

4. According to this Court, the order which is impugned in this petition, is passed at interlocutory stage, that is, without recording the evidence. Granting of damages / compensation premium, without recording evidence, is not permissible. Of course, absolute proposition of law cannot be laid down, but, in the instant case, the trial Court has awarded damages, at ad interim stage, in favour of the heirs and legal representatives of the Plaintiff, without considering the case of the original Defendant, therefore, the order cannot sustain in the eyes of law, and deserves to be quashed and set aside

by allowing this petition.

5. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. Order dated 15.10.2005 recorded below application Exh.114 in Special Civil Suit no. 104 of 2001 and Special Civil Suit no. 181 of 1996 is quashed and set aside. Rule is made absolute.

6. On the facts and in the circumstances emerging from the record of the case, the learned trial Judge is directed to expedite the hearing of the Special Civil Suit No. 104 of 2001 and Special Civil Suit No. 181 of 1996, pending on his file and shall try to conclude the hearing on or before 30.4.2007.

(A.M.Kapadia,J)

Jayanti*